

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

LUIS A. RAMIREZ,

Plaintiff,

v.

ANTHONY MELI, MARC CLEMENTS,
TOD RUSSEL, STEVEN SCHUELER,
CURT JANSSEN, BRET MIERZEJEWSKI,
MICHAEL GLAMANN and BRIAN PASSIG,

Defendants.

ORDER

04-C-0786-C

On May 3, 2005, I dismissed this action without prejudice for plaintiff's failure to exhaust his administrative remedies. The following day, the clerk of court entered a judgment of dismissal. Now plaintiff has filed a motion for reconsideration pursuant to Fed. R. Civ. P. 60 and a notice of appeal.

Once a case has been closed, a party seeking reconsideration of the order disposing of the case or the judgment may file one of two kinds of motions in the district court: a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59, or a motion for relief from the judgment or order pursuant to Fed. R. Civ. P. 60. It is not the purpose of allowing

motions for reconsideration to enable a party to complete presenting his case after the court has ruled against him. Frietsch v. Refco, Inc., 56 F.3d 825, 828 (7th Cir. 1995). Rather, the purpose of Rule 59 is to allow the district court to correct its own errors, sparing the parties and appellate courts the burden of unnecessary appellate proceedings. Charles v. Daley, 799 F.2d 343, 348 (7th Cir. 1986). However, motions under Rule 59 must be filed within ten days of the entry of judgment. Fed. R. Civ. P. 59(b). A litigant's failure to meet the time limits of Rule 59 forecloses him from raising in the district court his assertions that errors of law have been made. United States v. Griffin, 782 F.2d 1393 (7th Cir. 1986).

Plaintiff's motion for reconsideration is dated May 24, 2005. The 10-day deadline following the May 4 date of entry of the judgment expired on May 18, 2005. (Holidays and weekends are not counted.) Therefore, to the extent plaintiff may be attempting in his motion to suggest that errors of law were made in deciding his case, his arguments are foreclosed.

Motions for relief from a judgment or order pursuant to Fed. R. Civ. P. 60 may be made "within a reasonable time." Under this rule, reconsideration is allowed to modify the judgment as follows.

Rule 60(a) permits amendment of a judgment where there are clerical mistakes in the judgment or other parts of the record. Plaintiff is not alleging that he is entitled to amendment of the judgment because of clerical mistakes.

Rule 60(b)(1) and (2) permits a court to relieve a party from a final judgment, order, or proceeding because of "mistake, inadvertence, surprise, or excusable neglect," or "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." Legal error is not a proper ground for relief under Rule 60(b), Gleash v. Yuswak, 308 F.3d 758, 761 (7th Cir.2002). Indeed, even a post-judgment change of law does not allow relief under Rule 60(b). Id., citing Norgaard v. DePuy Orthopaedics, Inc., 121 F.3d 1074 (7th Cir. 1997). In any event, neither of these provisions is applicable under the circumstances of this case.

Rule 60(b) (3), (4), and (5) deal with judgments that are erroneous because the defendants have engaged in fraud, misrepresentation, or other misconduct, the judgment is void or it has been satisfied. Plaintiff asserts that defendants engaged in misconduct. He contends that they submitted a "fake" document with their March 17, 2005 motion to dismiss. However, in a letter dated May 27, 2005, defendants have explained that the 2002 rejection report that was submitted with their motion was printed from a computer that is using a current database macro. When defendants realized their error, they brought the error to the attention of the court, had the database programmer explain why the appeal language existed, submitted a copy of the February 25, 2002 rejection report and explained and documented the appeal process in place in February 2002. Defendants' prompt correction of the error as soon as it was discovered belies plaintiff's contention that they

attempted to engage in fraud, misrepresentation or other misconduct. In any event, this court concluded that plaintiff failed to exhaust his administrative remedies because he failed to appeal the rejection of his complaint in accordance with the administrative rules in place at the time. Therefore, there is no basis for granting plaintiff's motion under Fed. R. Civ. P. 60(b)(3).

Rule 60(b)(6) permits relief from a judgment for "any . . . reason justifying relief from the operation of the judgment." However, this provision has been interpreted as applying in situations in which extraordinary relief is sought and requires a showing of exceptional circumstances, none of which have been shown to exist in this case. See, e.g., Kagan v. Caterpillar Tractor Co., 795 F.2d 601 (7th Cir. 1986); Andrews v. Heinold Commodities, Inc., 771 F.2d 184 (1985).

Accordingly, plaintiff's motion for reconsideration pursuant to Fed. R. Civ. P. 60 will be denied.

Plaintiff's notice of appeal is not accompanied by the \$255 filing fee. Therefore, I construe the notice to include a request for leave to proceed on appeal in forma pauperis. This request is governed by the 1996 Prison Litigation Reform Act, which means that the court must determine first whether plaintiff has three strikes against him under 28 U.S.C. § 1915(g) or whether his appeal is not taken in good faith. Plaintiff does not have three strikes against him, and I do not intend to certify that his appeal is not taken in good faith.

The only other hurdle to plaintiff's proceeding with his appeal in forma pauperis is the requirement that he pay an initial partial payment of the filing fee that has been calculated from a certified copy of his trust fund account statement for the six-month period immediately preceding the filing of his notice of appeal. 28 U.S.C. § 1915(a)(2). Plaintiff has not submitted the necessary trust fund account statement. Until he does so, I cannot determine whether he is indigent and, if he is, the amount of his initial partial payment.

ORDER

IT IS ORDERED that plaintiff's motion pursuant to Fed. R. Civ. P. 60 for relief from the May 4, 2005 judgment is DENIED.

Further, IT IS ORDERED that plaintiff may have until June 22, 2005, in which to submit a certified copy of his trust fund account statement for the six-month period beginning approximately November 24, 2004 to approximately May 24, 2005. If, by June 22, 2005, plaintiff fails to submit the required trust account statement or show cause for his failure to do so, I will deny his request for leave to proceed in forma pauperis on the

ground that he has failed to show that he is entitled to indigent status on appeal.

Entered this 1st day of June, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge